

PT 00-27

TAX TYPE: PROPERTY TAX

ISSUE: CHARITABLE OWNERSHIP/USE

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

HUBBARD STREET
DANCE
CHICAGO, INC.
APPLICANT

v.

DEPARTMENT OF REVENUE
STATE OF ILLINOIS

No: 99-PT-0001
(97-16-0771)

Real Estate Exemption
for 1997 Tax Year

P.I.N.S: 17-17-223-001
17-17-223-002
17-17-223-003
17-17-223-004

Cook County Parcels

Alan I. Marcus
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Messrs. Joseph Stone and James Fortcamp of D' Ancona & Pflaum on behalf of Family Guidance Centers (hereinafter the "applicant").

SYNOPSIS: This proceeding raises two issues:¹ first, whether applicant qualifies as an "institution of public charity" within the meaning of Section 15-65 of the Property Tax Code, 35 ILCS 200/1-1 *et seq* (hereinafter the "Code"); and second, whether real estate identified by Cook County Parcel Index Numbers 17-17-223-001, 17-17-223-002, 17-17-

1. Applicant has raised a second issue in its appeal, that being whether the subject property qualifies for the "school" exemption set forth in Section 15-35 of the Property Tax Code. However, in light of my overall disposition of this case, the interests of administrative economy require that the Section 15-35 issue need not be adjudicated herein. Therefore, I shall eliminate further discussion of same from this Recommendation.

223-003 and 17-17-223-004 (hereinafter collectively referred to as the "subject property") was actually and exclusively used for charitable or beneficent purposes" during the 1997 assessment year, as required by Section 15-65 of the Code.

The controversy arises as follows:

Applicant filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals on March 2, 1998. Dept. Ex. No. 1. The Board reviewed applicant's complaint and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be denied. Applicant Ex. No. 2. After reviewing the Board's recommendation, the Department issued a determination denying the requested exemption, on grounds that the subject property is not in exempt ownership and not in exempt use. Dept Ex. No. 4. Applicant thereafter filed a timely appeal as to this denial and subsequently presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's initial determination be modified to reflect that 73% of the subject property be exempt from real estate taxes for 67% of the 1997 assessment year.

FINDINGS OF FACT:

A. Preliminary Considerations and Description of the Subject Property

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. Nos. 1, 2 and 4.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. Dept. Ex. No. 4.

3. The subject property is located at 1147 W. Jackson, Blvd, Chicago, IL 60607 and improved with a 55,000 square foot building. Applicant Ex. Nos. 1, 2; Applicant Ex. No. 3; Tr. p. 17.
4. Applicant acquired ownership of the subject property by means of a trustee's deed dated March 18, 1996. Applicant Ex. No. 1.

B. Applicant's Corporate and Financial Structures

5. Applicant was originally incorporated under the General Not For Profit Corporation Act of Illinois on December 19, 1977. Its basic organizational purposes are, per its Articles of Incorporation and by-laws, to provide instruction in dance, assist in the development of amateur and professional dancers and engage in other activities related thereto. Applicant Ex. Nos. 2A, 2B.
6. Applicant's by-laws state, *inter alia*, that it will provide for a waiver or reduction in fees based upon an individuals ability to pay. Applicant Ex. No. 2A.
7. The Internal Revenue Service determined that applicant qualified for exemption from federal income tax under Section 501(C)(3) of the Internal Revenue Code on March 2, 1994. This exemption remained in full force and effect throughout the 1997 assessment year. Applicant Ex. No. 4.
8. The Department issued applicant an exemption from payment of Illinois Use and related sales taxes on February 26, 1993. The Department based this exemption on its conclusion that applicant is "a non profit, 501(c)(3)

organization for the presentation of musical or theatrical works,” within the meaning of Section 3-5(3) of the Use Tax Act, 35 ILCS 105/1 *et seq.*

Applicant Ex. No. 6.

9. Applicant has no capital stock or shareholders. Its fiscal year begins September 1 of each calendar year and ends the ensuing August 31.
Applicant Ex. Nos. 14, 15.

10. Applicant obtained program service revenues from the following sources during the fiscal years ended June 30, 1997 and June 30, 1998:

SOURCE²	SUM³	% of TOTAL⁴
Performance Related Revenues	\$2,223,961.00	27%
Contributions	\$5,709,938.00	69%
Other/Miscellaneous Sources	\$ 330,121.00	4%
Total	\$8,264,020.00	

Applicant Ex. No. 5B

11. Applicant’s program service expenses for the same periods were as follows:

EXPENSE	SUM	% of TOTAL
Program Services Expenses	\$4,765,222.00	67%
Administrative Expenses And Other Related Support Service Expenses	\$2,334,633.00	33%
TOTAL	\$7,099,855.00	

2. This financial statement and one contained in Applicant Ex. No. 11 present only the major categories of income and expense. For more detailed breakdowns of the income and expense within each major category, *see*, Applicant Ex. No. 5B.

3. The figures shown on the charts are derived from the financial statement admitted as Applicant Ex. No. 5B. These statements present applicant’s financial structure on the basis of fiscal, rather than calendar, years. The Property Tax Code, however, defines the term “year” as meaning “calendar year” (35 ILCS 200/1-155). Because applicant’s fiscal year (September 1 through August 31) does not conform to a “calendar year” (January 1 through December 31), it is necessary to present applicant’s fiscal structure on the basis of combined figures for its 1997 and 1998 fiscal years. Thus, for example, \$2,223,961.00 in revenues from performance-related sources is equal to the sum of \$979,938.00 (1997 revenues from performance-related sources) + \$1,244,023.00 (1998 revenues from performance-related sources).

4. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues shown on the last line of the second column. Thus, \$2,223,961.00/\$8,264,020.00=.2691 (rounded four places past the decimal) or 27%.

Id.

C. Applicant's Operations

12. Applicant operations center around a number of community outreach programs, which it provides to schools and other organizations free of charge. Applicant Ex. No. 9, 16, 17A, 17B; Tr. p. 131.
13. The overall goal of the outreach programs is to introduce dance and its related arts to inner city schools and children who live in underprivileged areas. Applicant Ex. No. 9, 16, 17A, 17B; Tr. pp. 107-108.
14. The principal components of applicant's outreach programs are: (1) the docent program, through which applicant's staff members or other trained volunteers create and distribute study guides and other support materials that are designed to promote continued arts education the classroom; (2) school visits by a traveling ensemble of trainee dancers,⁵ which give performances, field questions and engage the students in interactive exercises; (3) teacher training workshops, which last five weeks and provide teachers with: (a) a basic understanding of dance; (b) ideas as to how they can incorporate dance into their curricula; and, (c) Lane credits⁶ for completing the workshops; (4) "Dancers Day in the Schools," wherein professional dancers from applicant's studio visit schools to discuss their careers and demonstrate movement; and, (5) lecture/demonstrations, which take place in a theater setting and begin with an onstage ballet class,

5. Those who perform in applicant's trainee ensemble are aspiring professional dancers who receive unlimited free training from applicant in exchange for their participation in the ensemble. Tr. pp. 123, 124.

progress through an interactive demonstration of the production process and conclude with an actual performance that features audience participation. Applicant Ex. Nos. 9, 16.

15. Applicant gave 138 outreach programs, which were attended by approximately 7,623 persons, during the fiscal year ended August 31, 1997. It gave another 176 outreach programs, which were attended by 1,338 persons, during its fiscal year ended August 31, 1998. Applicant Ex. Nos. 17A, 17B; Tr. p. 123.

16. The number of persons who saw or attended each type of outreach program during the fiscal year ended August 31, 1997 was as follows:

Program	Number of Times Applicant Gave Program	Number of Persons Who Saw or Attended Program
Docent	Docents Visited 12 Schools	619
Trainee Ensemble	31 Presentations	3,221
Dancers Day In the Schools	Dancers Visited 12 Schools	961
Lecture/Demonstrations	2 Separate Programs	2,811
Teacher Training Workshops	1 Workshop, Consisting of 5 Sessions	11

Applicant Ex. No. 17A; Tr. pp. 109-120.

17. The number of persons who saw or attended each type of outreach program during the fiscal year ended August 31, 1998 was as follows:

Program	Number of Times Applicant Gave Program	Number of Persons Who Saw or Attended Program
Docent	Docents Visited 18 Schools	869
Trainee Ensemble	51 Presentations	8,139
Dancers Day In the Schools	18 Programs	761
Lecture/Demonstrations	2 Separate Programs	4,038
Teacher Training Workshops	2 Workshop, Consisting of 5 Sessions	11

Applicant Ex. No. 17B; Tr. pp. 109-120.

6. Lane credits are part of a promotional incentive program offered to Chicago Public School System teachers. Tr. pp. 77-78, 94-96.

18. Schools that received free services through applicant's outreach programs during 1997 included, *inter alia*, Eisenhower High School, Kipling School, St. Mark School, Riverside Brookfield High, Evanston Township High, the Lockport Dance School and various senior citizen's organizations. Applicant Ex. 17A;⁷ Tr. pp. 109-120; 125.
19. Applicant also provided tap classes free of charge to students attending the Grant School, the Franklin Fine Arts School and the Abraham Lincoln Center. Applicant also provided full scholarships to its dance studio to any students who expressed an interest in, and demonstrated an ability to pursue, further instruction in dance. Applicant Ex. Nos. 17A, 17B; Tr. pp. 123, 124.
20. Applicant additionally performed free outreach programs for other audiences, and at other locations, during 1997. These included, *inter alia*, the Harold Washington Library and the Chicago Park District as well as YMCAs and senior citizen centers throughout the Chicago area. Tr. pp. 116-119.

D. Applicant's Use of the Subject Property

21. The subject property is improved with a two story, 55,000 square foot building located at 1147 W. Jackson Blvd. Chicago, IL 60607. Dept. Ex. No. 2.
22. Applicant acquired ownership of the subject property by means of a trustee's deed dated March 18, 1996. Applicant Ex. No. 1.

7. For a complete listing of schools and other organizations served by applicant's programs, *see*, Applicant Ex. Nos. 17A, 17B.

23. The Application for Property Tax Exemption, which applicant filed with the Department on June 24, 1998, indicates that applicant did not begin using the subject property until April 30, 1997. Dept Ex. No. 2.
24. Applicant did not submit any evidence establishing what, if any uses, it made of the subject property between March 18, 1996 and April 29, 1997. Administrative Notice.
25. Applicant actively used approximately 40,000 square feet, or 73%,⁸ of the improvement between April 30, 1997 and December 31, 1997.⁹ It held the remaining 27% of the improvement for possible future expansion throughout that time. Tr. pp. 17-18.
26. Applicant used the first floor for administrative purposes (i.e. office space, meeting rooms, etc.) and the second floor, which contained five dance studios, for outreach program rehearsals and dance classes during the period in question.¹⁰ Tr. pp. 17-18.
27. Applicant did not give or hold any performances at the dance studios. It did, however, offer classes in ballet, tap, jazz and other disciplines of dance at the dance studios. Applicant Ex. No. 19; Tr. p. 18.

8. $40,000/55,000 = .7273$ (rounded) or 73%.

9. December 31 marks the end of the 1997 assessment year, which is the one currently at issue. See, 35 ILCS 200/1-155 (defining the term “year” as “calendar year”); See also, Jackson Park Yacht Club v. Department of Local Government Affairs, 93 Ill. App.3d 542 (1st Dist. 1981) (a determination of exempt or taxable status for one year is not res judicata for any other tax year even where ownership and use remain the same.)

10. Unless the context clearly dictates otherwise, the uses described in this and all subsequent Findings of fact shall be uses that took place between April 30, 1997 and December 31, 1997.

28. Applicant charged fees for all of its classes but did provide financial assistance or made work study arrangements so that no one was excluded for inability to pay. Applicant Ex. No. 19; Tr. pp. 105, 123-124.
29. Applicant also offered teacher training workshops for the Lane credit program at its dance studios. It offered these workshops free of charge and provided the teachers with any additional instruction they might wish to take at no charge. Tr. pp. 124-125.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the 73% of the subject property from real estate taxes, but only for 67% of the 1997 assessment year. Accordingly, under the reasoning given below, the Department's initial determination in this matter should be modified in accordance with the following analysis:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code, (35 **ILCS** 200/1-1 *et seq*). The provisions of that statute which govern disposition of this case are found in Sections 200/15-65(a) and 15-65(c). Those provisions state, in pertinent part, that:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

35 ILCS 200/15-65.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the relevant exemption pertains to "institutions of public charity." The statutory requirements for this exemption are: (1) exempt ownership, and (2) exempt use. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) The first requirement is satisfied by appropriate evidence that the property in question is owned by an entity which qualifies as an "institution of public charity" (*id.*); the second is met by appropriate evidence that said property was "actually and exclusively used for charitable or beneficent purposes" during the tax year in question. *Id.*; 35 ILCS 200/15-65(a).

In the recent case of Randolph Street Gallery v. Department of Revenue, 1-00-0237 (August 9, 2000), the court held that "integrating art and art education into the spectrum of community activities ... is charity." *Id.* at 14. The same may be said of this applicant's numerous efforts to integrate dance into its target audience, which focuses on underprivileged areas of the greater Chicagoland community. Therefore, the Department's finding that the subject property was not owned by an "institution of public charity," within the meaning of Section 15-65 should be reversed.

With respect to the exempt use requirement, it first noted that applicant did not present any evidence as to what, if any uses, it made of the subject property between the

date of acquisition, March 18, 1996 and April 30, 1997. This latter date is significant because it is the one on which applicant began using the subject property for its own purposes, at least according to the Application for Property Tax Exemption that applicant itself filed with the Department. *See*, Dept. Ex. No. 2. Because applicant did not supplement this statement with evidence of previous exempt use, it failed to prove that the subject property was in exempt use during those portions of the 1997 assessment year that occurred on or before April 29, 1997. Therefore, Section 9-185 of the Property Tax Code, which requires that exemptions be pro-rated according to changes in ownership or use,¹¹ limits this exemption claim to 67% of the 1997

11. The relevant portion of Section 200/9-185 provides, in pertinent part, that:

... when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession ...[.]

35 ILCS 200/9-185.

assessment year.

It is further noted that applicant did not use the entire subject property for its own purposes during the period in question. Where a tract is used for two purposes, it is appropriate to exempt the part that is actually used for an exempt purpose and subject the remainder to taxation. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971). Here, applicant actively used 73% of the subject property in furtherance of its artistic outreach and other culturally-oriented programs during the relevant period. Accordingly, only that 73% was in exempt use throughout that time. For this and all the above-stated reasons, the Department's initial determination should be modified to reflect that 73% of the subject property be exempt from real taxes, but only for 67% of the 1997 assessment year.

WHEREFORE, for all the above-stated reasons, it is my recommendation that 73% of real estate identified by Cook County Parcel Index Numbers 17-17-223-001, 17-17-223-002, 17-17-223-003 and 17-17-223-004 be exempt from real estate taxes, but only for 67% of the 1997 assessment year.

August 29, 2000

Date

Alan I. Marcus
Administrative Law Judge